

OPEN MEETING ITEM



0000101483

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



RECEIVED

ERNEST G. JOHNSON
Executive Director

ARIZONA CORPORATION COMMISSION

2009 AUG -7 A 10:35

DATE: AUGUST 7, 2009

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO: T-03592A-08-0414 and T-03592A-09-0246

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

TEL WEST COMMUNICATIONS, LLC
(CANCEL CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 17, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

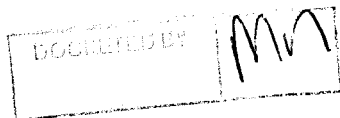
AUGUST 25, 2009 and AUGUST 26, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

AUG -7-2009



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 TEL WEST COMMUNICATIONS, LLC FOR
10 APPROVAL TO CANCEL ITS CERTIFICATE
11 OF CONVENIENCE AND NECESSITY.

DOCKET NO. T-03592A-08-0414

12 IN THE MATTER OF THE APPLICATION OF
13 TEL WEST COMMUNICATIONS, LLC FOR
14 APPROVAL TO CANCEL ITS CERTIFICATE
15 OF CONVENIENCE AND NECESSITY.

DOCKET NO. T-03592A-09-0246

ORDER

16 Open Meeting
17 August 25 and 26, 2009
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. Tel West Communications, LLC ("Tel West" or "Company"), has a Certificate of
24 Convenience and Necessity ("CC&N" or "Certificate") to provide resold local exchange
25 telecommunications services in Arizona pursuant to Decision No. 61674 (April 21, 1999).

26 2. According to the Commission's Utilities Division Staff ("Staff"), on July 7, 2008,
27 Staff received an email from Tel West advising Staff that it was no longer economically feasible for
28 the Company to continue to provide service in Arizona and that it intended to cease service in
November 2008. With its email, Tel West provided electronic copies of the termination notices it
planned to send to customers.

3. Staff attempted unsuccessfully to persuade the Company to docket an application to
cancel its CC&N. As a result, Staff filed Tel West's email request, on behalf of the Company, with
Docket Control on August 5, 2008, under Docket No. T-03592A-08-0414, as an application for

1 CC&N cancellation.

2 4. Subsequently, on May 19, 2009, the Company filed a Petition for Tel West
3 Communications LLC to Withdraw its Certificate of Convenience and Necessity ("Petition"), but it
4 did not reference the docket number of the application filed by Staff on the Company's behalf. As
5 such, rather than being filed under Docket No. T-03592A-08-0414, Tel West's Petition was assigned
6 a new matter number, Docket No. T-03592A-09-0246.

7 5. On May 28, 2009, Staff filed a Memorandum noting that the Company's Petition
8 should have been filed under the original docket rather than being assigned a new docket number.
9 Staff recommended that a procedural order be issued directing that the Petition should be filed under
10 Docket No. T-03592A-08-0414 and that Docket No. T-03592A-09-0246 should be administratively
11 closed. Alternatively, Staff recommended that the two dockets be consolidated.

12 6. On June 18, 2009, a Procedural Order was filed directing that, for ease of
13 administration, the dockets should be consolidated. (The Company's email correspondence filed by
14 Staff and the Company's Petition shall be collectively referred to as the "Application.")

15 7. On July 16, 2009, Staff filed a Memorandum recommending approval of the
16 Application.

17 8. According to the Application, Tel West provided to its customers three termination
18 notices between July 21, 2008, and November 1, 2008, notifying them of the Company's intent to
19 cease provision of service as of the end of November. The Company claimed that, during this time, it
20 contacted each customer individually to assist them in locating an alternative provider if the customer
21 had not already acquired a new service provider.

22 9. Tel West filed an Affidavit dated May 7, 2009, averring that it currently has no
23 customers in Arizona and has no future plans to provide service in Arizona. Tel West also attested
24 that it did not collect any advances, deposits and/or prepayments from its customers.

25 10. As such, Staff concluded that no Arizona customers would be impacted by
26 cancellation of the Company's Certificate.

27 11. Although the Company did not comply with certain terms of A.A.C. R-14-2-1107
28 requiring it to provide to customers a plan for the refund of deposits, a list of alternate providers, and

1 to publish notice of the application, Staff recommends that, because the Company did not collect
2 advances, deposits and/or prepayments, and currently has no customers in Arizona, compliance with
3 A.A.C. R-14-2-1107 should not be required.

4 12. As discussed in Decision No. 67404 (November 2, 2004), it would render
5 A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and plain language to
6 exempt a Company from the requirements of the rule because it has no customers due to its
7 discontinuation of service. However, as discussed in that Decision, the intent of the rule is to ensure
8 that existing customers have advance notice of a telecommunications provider's pending plan to
9 discontinue service such that they will be afforded an opportunity to procure service through an
10 alternative provider prior to such discontinuance.

11 13. The Company currently has no Arizona customers, did not collect any advances,
12 deposits and/or prepayments, and provided sufficient notice of its intent to terminate service to the
13 customers it had at the time. Under these circumstances, the requirements of A.A.C. R-14-2-1107
14 should be waived.

15 14. Staff recommends approval of Tel West's Application for cancellation of its
16 Certificate. Staff also recommends withdrawal of Tel West's tariffs on file with the Commission.

17 15. Staff's recommendations are reasonable.

18 CONCLUSIONS OF LAW

19 1. The Company is a public service corporation within the meaning of Article XV of the
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over the Company and the subject matter of the
22 Application.

23 3. The cancellation of the Company's Certificate is in the public interest.

24 4. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding
25 Certificates of Convenience and Necessity for certain telecommunication services without a hearing.

26 5. Staff's recommendations are reasonable and should be adopted.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that the Application of Tel West Communications, LLC, for the cancellation of its Certificate of Convenience and Necessity to provide resold local exchange telecommunications services in Arizona shall be, and is hereby, approved, and the Certificate of Convenience and Necessity is cancelled.

IT IS FURTHER ORDERED that Tel West Communications, LLC's, tariffs on file with the Commission are hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: TEL WEST COMMUNICATIONS, LLC
2 DOCKET NOS.: T-03592A-08-0414 and T-03592A-09-0246
3

4 Sheri Hicks, Regulatory Consultant
5 TEL WEST COMMUNICATIONS, LLC
6 4500 Bremner Drive
Austin, Texas 78749

7 Janice Alward, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

10 Steve Olea, Director
11 Utilities Division
12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28